

BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION

STATE OF MONTANA

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BOARD OF TRUSTEES, ST. IGNATIUS)
SCHOOL DISTRICT #28)

Appellants,)

vs.)

STEVE K. NELSON & MARIA J.)
NELSON, Petitioners, JAMES K.)
NELSON & SANDRA S. NELSON,)
Petitioners, LOUIS L. POLINSKY,)
Petitioner,)

Respondents.)

OSPI 261-96

DECISION AND ORDER

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PROCEDURAL HISTORY

St. Ignatius K-12 School District No. 28 (hereinafter "St. Ignatius" or "the K-12 District") appeals the Lake County Superintendent of Schools' decision approving the transfer of territory (less than .006 of the District's taxable value) from the K-12 District to the Charlo High School District No. 7J (hereinafter "Charlo High School" or "the High School District").

K-12 districts are established under Title 20, Chapter 6, Part 7 and encompass both an elementary and a high school district. This appeal was filed prior to the amendments to §§ 20-6-213 and 20-6-320, MCA, which places the jurisdiction of appeals of territory transfer decisions with the District Courts. At the time of this hearing elementary transfers were appealed to county commissioners and high school transfers were appealed to the State Superintendent.

In November, 1995, the Lake County Superintendent of Schools received a petition to transfer a very small area of land from St. Ignatius K-12 to the Charlo Elementary School District No. 7J and the Charlo High School District. The Charlo Trustees approved the transfer and the Lake County Commissioners certified that the petition met the statutory requirements.

Following proper notice, a public hearing was held to consider the transfer. Exhibits and testimony were offered by several residents and the St. Ignatius Superintendent. Neither the petitioners nor the school districts were represented by counsel. On December 28, 1995, the County Superintendent issued Findings of Fact, Conclusions of Law and Order approving the transfer of territory. St. Ignatius K-12 appealed. Neither party submitted a brief although the St. Ignatius Board of Trustees submitted arguments in a letter.

Having reviewed the record, the County Superintendent's Findings of Fact, Conclusions of Law and Order and the arguments on appeal, the State Superintendent of Public Instruction now enters the following:

DECISION AND ORDER

The State Superintendent had jurisdiction over this matter at the time this appeal was perfected. Section 20-6-320. There is substantial, credible evidence on the record to support the County Superintendent's findings of fact. The conclusions of law are correct. The order is **AFFIRMED**.

STANDARD OF REVIEW

The State Superintendent's review of a county superintendent's decision is based on the standard of review of administrative decisions established by the Montana Legislature in § 2-4-704, MCA, and adopted by this Superintendent in ARM 10.6.125. The Montana Supreme Court has interpreted § 2-4-704 to mean that findings of fact are reviewed under a clearly erroneous standard

and conclusions of law are reviewed under an abuse of discretion standard. Harris v. Trustees, Cascade County School Districts No. 6 and F, and Nancy Keenan, 241 Mont. 274, 786 P.2d 1164 (1990). The petitioner bears the burden of showing that he has been prejudiced by a clearly erroneous ruling. Terry v. Board of Regents, 220 Mont. 214, at 217, 714 P.2d 151, at 153 (1986).

The State Superintendent may not substitute her judgment for that of a county superintendent as to the weight of the evidence on questions of fact. Findings are upheld if supported by substantial, credible evidence in the record. A finding is clearly erroneous only if a "review of the record leaves the Court with the definite and firm conviction that a mistake has been committed." Wage Appeal v. Board of Personnel Appeals, 208 Mont. 33, at 40, 676 P.2d 194, at 198 (1984).

Conclusions of law are subject to more stringent review. The Montana Supreme Court has held that conclusions of law are reviewed to determine if the agency's interpretation of the law is correct. Steer, Inc. v. Dept. of Revenue, 245 Mont. 470, at 474, 803 P.2d at 603 (1990).

MEMORANDUM OPINION

St. Ignatius raised the following issue on appeal:

The Order should be reversed because §§ 20-6-213 and 20-6-320, MCA, do not apply to a K-12 school district.

In 1991 the Legislature enacted HB 335 (Ch. 555, L. 1991, codified at Title 20, Chapter 6, Part 7). The Act stated "It is the intent of the legislature to encourage the formation of K-12 school districts whenever the trustees and the electorate of districts with the same boundaries choose to do so." In 1993, the Legislature passed SB 307 (Ch 194, L. 1993), which required all elementary districts with the same district boundaries as a high school district to attach to the high school district to form a K-12 school district by July 1, 1995. At the time of this appeal, territory transfers from or to a K-12 school district had not been addressed by the Legislature and there were no procedures in statute.

The County Superintendent used the procedures in the existing statutes governing territory transfers as guidance (Transcript, p. 7) and determined that the single petition submitted to transfer territory from a K-12 school district to an elementary and a high school district (Charlo Elementary District and Charlo High School District) was valid. Prior to the hearing, the County Superintendent made the following announcement and proceeded accordingly:

Whereas the establishment of K-12 school districts is relatively new to the State of Montana and St. Ignatius School District #28 is a legally defined K-12 district;

Whereas the Hearing Officer finds no procedure for transfer from a K-12 school district to an elementary district and/or an high school district;

Whereas the procedures set forth for transfer of territory in 20-6-213, MCA for elementary and 20-6-320, MCA for high school are similar through the hearing process and have been complied with; and

Whereas the Petition For Transfer is from one St. Ignatius K-12 District to both Charlo elementary and high school districts is a valid, certified, filed petition under 20-6-213, MCA and 20-6-320, MCA and is the only known procedure for such transfer;

Therefore the Hearing Officer will proceed with one hearing and will issue one FINDINGS OF FACT AND CONCLUSIONS OF LAW which will preclude the possibility of creating different elementary and high school boundaries for St. Ignatius K-12 School District #28.

County Superintendent's Findings of Fact, Conclusions of Law and Order, dated December 28, 1995, p. 4.

The County Superintendent's reasoning anticipated the reasoning of the Montana Supreme Court. Although the decision is not exactly on point, Alberton School District No. 2, vs. Superintendents of Missoula, Ravalli and Mineral County Schools, No. 99-488, 2000 MT 264 (9/29/00), provides guidance on the issue of whether one or two petitions should be filed when a K-12 school district is involved. The decision involved the transfer of territory from one K-12 school district to another. One petition was submitted to the County Superintendent. The Appellant, Alberton School District, argued that according to statute, two petitions were required. The Court concluded that:

It would be unreasonable, and far too formalistic to require that two separate petitions must be submitted to the school superintendent, where one petition, clearly identifying the intent to transfer both high school and elementary territory, serves the same function.

Alberton School District No. 2, vs. Superintendents of Missoula, Ravalli and Mineral County Schools, No. 99-488, 2000 MT 264 (9/29/00), paragraph 37.

The procedures that existed at the time of this appeal required an appeal from the county superintendent's order to go in two different directions - transfer of elementary territory to the county commissioners and transfer of high school territory to the State Superintendent. This left a possibility that two different decisions could be rendered changing the makeup of the K-12 district. The County Superintendent correctly addressed this problem by considering the transfer from the K-12 district as both an elementary and high school transfer. The procedure used by the County Superintendent is consistent with the intent of the Legislature.

CONCLUSION

The Decision of the Lake County Superintendent is AFFIRMED.

DATED this 11th day of December, 2000.

/s/ Nancy Keenan
NANCY KEENAN

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 11th day of December, 2000, a true and exact copy of the foregoing DECISION AND ORDER was mailed, postage prepaid, to the following:

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Lake County Courthouse
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Polson, MT 59860

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